

Date 9-5-95

City

JUL 19 1995

Employer Identification Number:

Key District:

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax as an organization described in section 501(c)(4) of the Internal Revenue Code. We have determined that you do not qualify for exemption under that section of the Code. Our reasons for this conclusion and the facts upon which it is based are explained below.

The information submitted indicates that you were incorporated on [REDACTED], under the laws of the State of [REDACTED]. Your Articles of Incorporation state that your purposes are (1) to enhance and protect the value, desirability, attractiveness, and quality of the [REDACTED] Subdivision as a whole and each of the lots therein, and (2) to assume the rights and duties of [REDACTED], the Declarant under the [REDACTED] Declaration of Restrictive Covenants, and to enforce the provisions therein. Your Articles also state that each person, corporation, or other legal entity who has an ownership interest in a lot as evidenced by a duly recorded conveyance document so indicating such interest shall be a member of your organization; membership is appurtenant to and may not be separated from the ownership of any such lot, and such ownership shall be the sole qualification for membership in your organization.

Your Declaration of Restrictive Covenants states, among other matters, that at a certain time the Developer will form your organization and will release and transfer all its rights to enforce the Declaration to you, that the private roadway lot and the pedestrian easement for access to [REDACTED] will be maintained at the expense of all lot owners and by decision of a majority thereof, and that each owner shall be responsible for erecting a light fixture within ten feet of the right of way of each owner's lot.

[REDACTED]

In your application, you state that you provide the means to enforce covenants, to protect and enhance the value, desirability, and attractiveness of your development, and that you have provided this service since your inception. In your letter dated [REDACTED], you stated that (1) you have no common areas which you maintain, improve, or preserve, (2) you do not bear any recognizable relationship to any area ordinarily identified as a governmental subdivision or a unit or district thereof, (3) you provide no services such as refuse pickup, street lights, or resurfacing of streets, (4) you have not provided any exterior maintenance for the owners of each lot, and (5) you do not plan to construct a clubhouse, lake, pool, or other recreational facilities. You also stated that your subdivision is not enclosed by a wall, fence, or some other structure.

Also in your letter dated [REDACTED], you explained about your roadway conversion project, which is designed to complete the transfer of ownership of the road that is the center of your subdivision, giving access to each of [REDACTED] properties, from [REDACTED], to you and then to the County of [REDACTED]. You state that your Developer, [REDACTED], intended to pass ownership of the road to the ownership of all the owners of the subdivision, but the transfer was never made; [REDACTED], is now a defunct corporation and all efforts to find an executor to the estate have failed. You state that by law, lot owners have rights to use the road to access their properties. You also state that there has been no maintenance on the road to date but that it will eventually require spot maintenance and later complete resurfacing, the cost to be shared amongst all the lot owners. You state that if you do not facilitate the transfer of the road to the County of [REDACTED], the alternative will be more costly to you and your members since repair and repavement of the road would be in excess of \$[REDACTED]. With regard to a particular use of the road, you state:

"Recently, we have had children use the road as a place to ride their motor scooter, taking turns running up and down the road. The end of the cul-de-sac is popular with the younger generation as a hang out spot, where drinking and socializing activities take place, evidenced by broken alcoholic beverage bottles being found. The liability of this type of activity is tremendous to the owners and visitors of lots within the subdivision. Because the road is a private roadway, local law enforcement officers have little or no jurisdiction in enforcing restrictions to this type of activity."

[REDACTED]

In your newsletter of [REDACTED], you state that the road conversion project is by far the most important issue at this time and that when completed, the project will be the best \$[REDACTED] insurance policy ever purchased by the members. You state that in the meantime, any damage to the road should be reported immediately to you, and anyone seen using the road in a careless manner should be reported to the police as trespassers and removed from the subdivision.

Section 501(c)(4) of the Code provides for the exemption from federal income tax of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1(a)(1) of the Income Tax Regulations provides that a civic league or organization may be exempt as an organization described in section 501(c)(4) of the Code if it is not organized or operated for profit, and it is operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1(a)(2)(i) of the regulations provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated primarily for the purpose of bringing about civic betterments and social improvements.

Rev. Rul. 69-280, 1969-1 C.B. 152, concludes that an organization formed to provide maintenance of exterior walls and roofs of members' homes in a development is not exempt under section 501(c)(4) of the Code because it is operated directly and primarily for the benefit of individual members rather than for the community as a whole.

Rev. Rul. 72-102, 1972-1 C.B. 149, holds that nonprofit organization formed to preserve the appearance of a housing development and to maintain streets, sidewalks, and common areas for use of the residents is exempt under section 501(c)(4) of the Code. The Revenue Ruling concludes that by administering and enforcing covenants, owning and maintaining certain non-residential, non-commercial properties of the type normally owned and maintained by municipal governments, this organization is serving the common good and the general welfare of the people of the entire development. The Revenue Ruling also states that for purposes of section 501(c)(4), a neighborhood, precinct, subdivision, or housing development may constitute a community

and that, for example, exempt civic leagues in urban areas have traditionally represented neighborhoods or other subparts of much larger political units.

Rev. Rul. 74-99, 1974-1 C.B. 132, modifies Rev. Rul. 72-102, supra, and holds that a homeowners' association, preserving appearance and maintaining common areas, to qualify for exemption under section 501(c)(4) of the Code, (1) must serve a "community" which bears a reasonably recognizable relationship to an area ordinarily identified as governmental, (2) it must not conduct activities directed to the exterior maintenance of private residences, and (3) the common areas or facilities it owns and maintains must be for the use and enjoyment of the general public. The Revenue Ruling states that a community within the meaning of section 501(c)(4) and the regulations is not simply an aggregation of homeowners bound together in a structured unit formed as an integral part of a plan for the development of a real estate subdivision and the sale and purchase of homes therein. Although an exact delineation of the boundaries of a "community" contemplated by section 501(c)(4) is not possible, the term as used in that section has traditionally been construed as having reference to a geographical unit bearing a reasonably recognizable relationship to an area ordinarily identified as a governmental subdivision or a unit or district thereof.

Rev. Rul. 74-99, supra, also states that the characteristics of homeowners described in Rev. Rul. 72-102, supra, are generally typical of many such organizations formed in recent years that seek exemption under section 501(c)(4) of the Code and may be summarized as follows: (1) the organization is formed by a commercial real estate developer as an integral part of a plan for the development of a subdivision; (2) membership in the association is required of all purchasers of lots in the development; (3) membership is open only to the developer (at least for such time as he owns property in the development) and those who purchase lots; (4) the organization is supported by periodic assessments against the members and an unpaid assessment constitutes a lien on the property of the homeowner-member; (5) the stated purposes of the organization are, generally speaking, to administer and enforce covenants for preserving the architecture and appearance of the given real estate development, and to own and maintain common green areas, streets, and sidewalks. The Revenue Ruling continues that this format is spelled out in written documents which form a part of, and are inextricably tied to, enforceable contracts for the sale and purchase of private property. In the light of this combination of factors, the prima facie presumption is that these organizations are essentially and primarily formed and operated

for the individual business or personal benefit of their members, and, as such, do not qualify for exemption under section 501(c)(4).

The information submitted shows that your primary purpose at the present time is the roadway conversion project. By trying to turn the roadway over to the County of [REDACTED], as opposed to the exempt homeowners' association described in Rev. Rul. 72-102, supra, you are trying to avoid maintaining the roadway providing access to the properties in your subdivision and end any responsibility or jurisdiction you may have over it rather than to maintain it in the manner of organizations recognized as exempt under section 501(c)(4) of the Code.

It is inherent in the definition of a homeowners association within the meaning of section 501(c)(4) of the Code that the organization is aiding the general community, not just members of the organization within the community in their individual capacities. Rev. Rul. 69-280, supra, makes it clear that an association organized primarily to benefit its members does not promote social welfare within the meaning of section 501(c)(4). Although you do not provide maintenance of your members' homes, you also do not provide services, facilities, or even easy access to persons in the general community of which you are a part. The roadway in your area is considered to be a private roadway and your newsletter makes clear that anyone of the general community who is not one of your members using this roadway may be considered as a trespasser. Such considerations point to the fact that you are not promoting the social welfare of the general community but rather are operating for the benefit of your individual members. Such activities are not within the meaning of section 501(c)(4).

Rev. Rul. 74-99, supra, states that although there is a presumption that homeowners associations "are essentially and primarily formed and operated for the individual business or personal benefit of their members," they may have characteristics that rebut the presumption and establish exemption under section 501(c)(4) of the Code. You have not shown that you are able to rebut the presumption.

Furthermore, we are unable to conclude that you serve a "community" within the meaning of section 501(c)(4) of the Code, as discussed in Rev. Rul. 72-102, supra, as modified by Rev. Rul. 74-99, supra. There is no evidence in the file to show that you constitute a geographical unit bearing a reasonably recognizable relationship to an area ordinarily identified as a governmental subdivision or a unit or district thereof and, in fact, you have stated that you are not such a unit.

[REDACTED]

For these reasons, we conclude that you do not qualify for recognition of exemption from federal income tax under section 501(c)(4) of the Code. You are required to file federal income tax returns.

You have the right to protest this ruling if you believe that it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement must be submitted within 30 days of the date of this letter and must be signed by one of your officers. You also have a right to a conference in this office after your protest statement is submitted. If you want a conference, you must request it when you file your protest statement. If you are to be represented by someone who is not one of your officers, he/she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements.

If we do not hear from you within 30 days, this ruling will become final and copies of it will be forwarded to your key District Director. Thereafter, any questions about your federal income tax status should be addressed to your key District Director.

When sending additional letters with respect to this case to the Internal Revenue Service, you will expedite their receipt by placing the following address on the envelope:

Internal Revenue Service
[REDACTED]
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Sincerely yours,

(signed) [REDACTED]
[REDACTED]

Chief, Exempt Organizations
Technical Branch 5

cc: [REDACTED]

[REDACTED]

7-5-95

[REDACTED]

7-19-95